



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 11, 1998

Ms. Joni M. Vollman
Assistant General Counsel
Office of the District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-1893

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117521.

The Harris County District Attorney (the "district attorney") received an open records request for all records pertaining to 15 specified criminal prosecutions. You state that the district attorney has released some of the requested information. You seek to withhold other records pursuant to sections 552.103 and 552.108(a)(3) of the Government Code. You have submitted a representative sample of the records at issue to this office for review.

You contend that section 552.103 excepts the information at issue from required public disclosure because "these case[s] appear to still be on direct appeal."¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. Based on your representation to this office that the records at issue relate to pending criminal appeals, we conclude that the district attorney may withhold these records at this time pursuant to section 552.103.²

¹You base this statement on print-outs of computer records of cases where the last activity appears to have been in 1990. We assume for purposes of this ruling that the district attorney has made a good faith determination that the records at issue in fact relate to cases that are currently under active appeal.

²Because we resolve your request under section 552.103, we need not address at this time the applicability of section 552.108(a)(3). In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We assume, however, that none of the information in the records at issue has previously been made available to the criminal defendant or his attorneys. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the defendant or his attorneys have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/RWP/ch

Ref: ID# 117521

Enclosures: Submitted documents

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(w/o enclosures)